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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 10/766,965  
Filing Date: January 29, 2004  
Appellant(s): DALEY ET AL.

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Ruth J. Ma  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 10/2/2009 appealing from the Office action mailed 11/12/2008.

**(1) Real Party in Interest.**

A statement identifying the real party of interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(4) Status of Amendments After Final**

No amendment after final has been filed.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

<b>6,014,643</b>	<b>Minton</b>	<b>01-2000</b>
<b>6,606,744</b>	<b>Mikurak</b>	<b>08-2003</b>

**(9) Grounds of Rejection**

***Claim Rejections - 35 USC § 112***

1. The term "a length of time" in claim 1 & 15 is a relative term which renders the claim indefinite. The term "a length of time" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention.
2. Claims 34-49 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
4. Claims 12-15, 17, 18, 21, 22 & 34-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Minton US 6,014,643 in view of Mikurak US 6,606,744 B1.

As per claim 12 (Currently Amended), Minton US 6,014,643 discloses a method comprising:

receiving information about storing a first order, in which the information includes:

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at least one parameter of the identifier associated with a trading first order (“If the security is traded on the individual securities trading network, that information is denoted under the column labeled RMST. A cusip number for each security is also provided. A security's cusip number is a unique numerical identifier for a given security.”

Minton US 6,014,643, col.10, lines 32-36);

an identity of a market center to which the first order is to be routed (“From the server, the offer is transmitted to additional data processing systems which are connected to the communication network. The first user's offer is eventually sent to a second data processing system, where a second individual enters an acceptance to the first user's offer to sell a security. Minton US 6,014,643, col.3, lines 6-11); and

assigning a time threshold to the first order, in which the time threshold comprises the length of time of the market center less a pre-determined amount of time (“The reason this order could not be executed immediately is there would be a \$2.00 difference between the lowest price the user was willing to accept for their share of stock and the highest price another user was willing to pay for it. In such cases, these limit orders remain active until they either expire or they are canceled by a user.” Minton US 6,014,643, col.9, lines 47-52); and

transmitting an instruction to cancel the first order (“Cancel order button 422 allows one to cancel a previously entered limit order.” Minton US 6,014,643, col.9, lines 12-13);

generating a second order, in which the second order comprises the at least one parameter of the first order; and (“In trading screen 400, limit orders to buy are displayed in buy window 428, and limit orders to sell are displayed in sell window 432.

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These orders display the user name and user identification number of the user who wishes to buy or sell the security. Also shown is the price and quantity of the security being traded, and any special conditions of the order. As is shown in FIG. 4, buy window 428 contains various limit orders to buy various amounts of General Motors' (GM) stock. Likewise, sell window 432 contains various limit orders to sell various amounts of GM stock. Field 436 displays the name of the stock currently being traded in windows 428 and 432." Minton US 6,014,643, col.9, line 58-col. 10, line 2)

Minton US 6,014,643 fails to explicitly teach:

an indication that the market center charges a transaction cost for orders that are processed after a length of time;

determining that the first order has not been processed before the time threshold;

routing the second order to the market center.

Mikurak US 6,606,744 B1 teaches: "Use of WAF will normally result in lower usage costs, decreased transaction costs, more efficient access to electronic information, re-usability of rights protection and other transaction management implementations, greatly improved flexibility in the use of secured information, and greater standardization of tools and processes for electronic transaction management." (Mikurak US 6,606,744 B1 col. 133, lines 31-37), "As another example, a distributor that failed to make payments and/or report usage information to a content provider might find that their budget for creating permissions records to distribute the content provider's content to users, and/or a security budget limiting one or more other aspect of their use of the provider's content, are not being refreshed by the content provider, once exhausted or

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timed-out (for example, at a predetermined date). In these and other cases, the offended party might decide not to refresh time ageing keys that had "aged out." Such a use of time aged keys has a similar impact as failing to refresh budgets or time-aged authorizations." (Mikurak US 6,606,744 B1 col. 208, lines 20-33) and "The system includes integrated Internet Protocol (IP) telephony services allowing a user of a web application to communicate in an audio fashion in-band without having to pick up another telephone. Users can click a button and go to a call center through the network using IP telephony." (Mikurak US 6,606,744 B1 col. 2, lines 60-65)

It would have been obvious to one of ordinary skill in the art at the time of the invention to include a timer, a transaction cost indicator and routing the order as taught by Mikurak US 6,606,744 B1 in the system of Minton US 6,014,643, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

As per claim 13 (Currently Amended), Minton US 6,014,643 further discloses a method of claim 12, further comprising:

calculating the time threshold of first order ("Expiration of order field 628 allows a user to specify when a limit order should expire. Special order field 610 allows one to place special conditions upon the order being entered into buy screen 600." Minton US 6,014,643, col.11, lines 19-22)

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As per claim 14 (Currently Amended), Minton US 6,014,643 further discloses a method of claim 12 further comprising monitoring a status of the first order is to determine whether the first order has been processed by the market center. (“Activation of trade report button 1220 will display a summary of the execution activity in the market created by the user. Finally, monitor markets button 1218 allows a user to monitor other markets they have created.” Minton US 6,014,643, col.15, lines 21-24)

As per claim 15 (Currently Amended), Minton US 6,014,643 further discloses a method of claim ~~14~~ 14.

Minton US 6,014,643 fails to explicitly teach that in which the act of monitoring further comprises:

using a timer to measure a length of time that first order is active within the market center; and

receiving an indication that the length of time that the first order is active within the market center equals the time threshold.

Mikurak US 6,606,744 B1 teaches “Contemporary fixed length record formats include time point fields recording local time in three (3) second increments where local switch time represents the time of day at a switch. The timepoint fields are used by the network switches, billing center, and other network subsystems. Each subsystem, however, may require the time period for a different use and in a different format, such as in an epoch time format.” (Mikurak US 6,606,744 B1 col. 49, lines 14-22) and “The Customer Quality of Service Management Process 1302 encompasses monitoring, managing and



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reporting of quality of service as defined in Service Descriptions, Service Level Agreements (SLA), and other service-related documents. It includes network performance, but also performance across all of service parameters, e.g., Orders Completed On Time. Outputs of this process are standard (predefined) and exception reports, including; dashboards, performance of a service against an SLA, reports of any developing capacity problems, reports of customer usage patterns, etc.” (Mikurak US 6,606,744 B1 col. 45, lines 44-54).

It would have been obvious to one of ordinary skill in the art at the time of the invention to include a timer indicating the length of a transaction as taught by Mikurak US 6,606,744 B1 in the system of Minton US 6,014,643, since the claimed invention is merely a combination of old elements, and in the combination each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.

16. Cancelled.

As per claim 17 (Currently Amended), Minton US 6,014,643 further discloses a method of claim 42 15, in which the timer begins measuring as soon as the first order is routed to the market center. (“Sales data window 430 displays the time, the size, and the price of all orders that have been executed on the individual securities trading network.” Minton US 6,014,643 col. 10, lines 12-14)

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As per claim 18 (Currently Amended), Minton US 6,014,643 further discloses a method of claim ~~12~~ 14, in which the act of monitoring is performed by a timer (“Sales data window 430 displays the time, the size, and the price of all orders that have been executed on the individual securities trading network.” Minton US 6,014,643 col. 10, lines 12-14) It is obvious that the timing of the trading network is performed by a timer.

19-20. Cancelled.

As per claim 21 (Currently Amended), Minton US 6,014,643 further discloses a method of claim 12, in which the status of the first order comprises one of:

a pending state 31-35); (“When a user places a sell or buy order, this order will be either a market order or a limit order. A market order is an order that is able to be executed immediately. A limit order is an order which cannot be executed immediately due to the current price of the security and the price at which the order was placed.” Minton US 6,014,643 col. 9, lines

a filled state (“Once an order has been executed, a confirmation screen will appear with the security symbol that was just bought or sold, the number of shares traded, and the price at which the shares were traded.” Minton US 6,014,643 col. 12, lines 50-53);

a cancelled state (“Cancel order button 422 allows one to cancel a previously entered limit order.” Minton US 6,014,643, col.9, lines 12-13); and

a terminated state. (“Bid open/close button 1204 allows the user to temporarily close their limit order to buy securities. This allows a user to temporarily stop buying the

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security, and then begin buying the security when they reactivate bid open/close button 1204.” Minton US 6,014,643, col.15, lines 6-10)

As per claim 22 (Currently Amended), Minton US 6,014,643 further discloses a method of claim 12 further comprising:

assigning an external identifier to the first order (“In trading screen 400, limit orders to buy are displayed in buy window 428, and limit orders to sell are displayed in sell window 432. These orders display the user name and user identification number of the user who wishes to buy or sell the security. Also shown is the price and quantity of the security being traded, and any special conditions of the order.” Minton US 6,014,643, col.10, lines 58-64);

assigning an internal identifier to the first order. (“If the security is traded on the individual securities trading network, that information is denoted under the column labeled RMST. A cusip number for each security is also provided. A security's cusip number is a unique numerical identifier for a given security. Finally, the primary market in which the security is traded is also displayed.” Minton US 6,014,643, col.10, lines 32-37)

23-33. Cancelled.

As per claim 34 (New), Minton US 6,014,643 further discloses an apparatus of comprising:

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a processor; and a memory, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 12. ("FIG. 1 depicts data processing system 20. Data processing system 20 is capable of executing the computer program which allows users to buy and sell securities from other users over an individual security trading network. (The individual security trading network will be discussed in a subsequent portion of this specification.) Data processing system 20 can be the data processing system from which a user can buy and sell securities from other users attached to the individual security trading network; or it can function as a server for the individual security trading network. Generally, when functioning as a server, data processing system 20 will have more processing power, storage capability, memory, etc. than when it is functioning as a user's data processing system." Minton US 6,014,643, col.3, line 65-col. 4, line 11)

Claims 35-49 are rejected under the same rationale as claim 34.

35. (New) The apparatus of claim 34, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 13.

36. (New) The apparatus of claim 34, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 14. (This claim is rejected under the same rationale as claim 34.)

37. (New) The apparatus of claim 36, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 15.

38. (New) The apparatus of claim 37, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 17.

39. (New) The apparatus of claim 36, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 15.

40. (New) The apparatus of claim 34, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 21.

41. (New) The apparatus of claim 34, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 22.

42. (New) An article of manufacture comprising:

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a storage medium, in which the storage medium stores instructions which, when executed by a processor, direct the processor to perform the method of claim 12.

43. (New) The article of manufacture of claim 42, in which the storage medium stores instructions which, when executed by the processor, direct the processor to perform the method of claim 13.

44. (New) The article of manufacture of claim 42, in which the storage medium stores instructions which, when executed by the processor, direct the processor to perform the method of claim 14.

45. (New) The article of manufacture of claim 44, in which the storage medium stores instructions which, when executed by the processor, direct the processor to perform the method of claim 15.

46. (New) The article of manufacture of claim 45, in which the storage medium stores instructions which, when executed by the processor, direct the processor to perform the method of claim 17.

47. (New) The apparatus of claim 44, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim

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18.

48. (New) The apparatus of claim 42, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 21.

49. (New) The apparatus of claim 42, in which the memory stores instructions which, when executed by the processor, direct the processor to perform the method of claim 22.

***Response to Arguments***

5. In the remarks filed on 10/2/2009;

Applicant argues that **(1)** there is no rationale for the rejection of claims 34-41 & 42-49 as being indefinite under 35 USC §112.

In response to argument **(1)**, examiner notes that the claim language as stated covers any computer which is programmed with suitable software to execute the method recited by claims 12-15, 17, 18, 21 & 22 without indication as to which computer type is included or excluded.

Applicant argues that **(2)** the specification expressly defines “a length of time” as a pre-determined amount of time in which a market center will process a trading order before charging a transaction cost and is therefore not indefinite under 35 USC §112.

In response to **(2)** the claim language of claim 12 recites “assigning a time threshold to the first order, in which the time threshold comprises the length of time of the market center less a pre-determined amount of time”, while claim 15 recites “using a timer to measure a length of time that first order is active within the market center; and receiving an indication that the length of time that the first order is active within the market center equals the time threshold”. Examiner notes that as stated the “time threshold” is calculated by using “a pre-determined time” which is also unspecified, rendering the time threshold and the pre-determined time indefinite.

Applicant argues that **(3)** referring to another claim does not make a claim dependent.



In response to **(3)**, MPEP 608.01(n) in section III states “The test as to whether a claim is a proper dependent claim is that it shall include every limitation of the claim from which it depends (35 U.S.C. 112, fourth paragraph) or in other words that it shall not conceivably be infringed by anything which would not also infringe the basic claim.”

Applicant argues that **(4)** the combination of Minton US 6,014,643 in view of Mikurak US 6,606,744 B1 does not teach “time measurement” in rejecting claims 12-15.

In response to **(4)** Mikurak US 6,606,744 B1 recites “The Customer Quality of Service Management Process 1302 encompasses monitoring, managing and reporting of quality of service as defined in Service Descriptions, Service Level Agreements (SLA), and other service-related documents. **It includes network performance, but also performance across all of service parameters, e.g., Orders Completed On Time.** Outputs of this process are standard (predefined) and exception reports, including; dashboards, performance of a service against an SLA, reports of any developing capacity problems, reports of customer usage patterns, etc.” (Mikurak US 6,606,744 B1 col. 45, lines 44-54). The recited passage clearly refers to the measurement of time as a part of network performance parameter determination.

Mikurak US 6,606,744 B1 further recites “In evaluating the real-time purchasing of bandwidth during call establishment, one pertinent area is the time required to complete a transaction. As many protocols such as ATM have timeout values for call setup, it may be necessary to stay within these specifications. These timeout values are typically high to accommodate network congestion. In addition, some of these values can be tuned by

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vendor equipment.” (Mikurak US 6,606,744 B1 col. 287, lines 40-47) Examiner notes that the use of timeouts, (resulting from time measurements) is old and well known in supply chain environments.

Applicant argues that **(5)** the combination of Minton US 6,014,643 in view of Mikurak US 6,606,744 B1 does not teach “monitoring the status of the first order” in rejecting claims 14 & 21.

In response to **(5)**, Mikurak US 6,606,744 B1 recites “This process logs customer contacts, directs inquires to the appropriate party, and tracks the status to completion.” (Mikurak US 6,606,744 B1 col. 45, lines 33-35)

Applicant argues that **(6)** there is no motivation to combine Minton US 6,014,643 with Mikurak US 6,606,744 B1 in rejecting claims 12-15, 17, 18, 21, 22 & 34-49.

In response to **(6)**, one of ordinary skill in the art would have recognized that applying the known technique of time interval measurement to Minton US 6,014,643 would have yielded predictable results and resulted in an improved system. It would have been recognized that applying the technique of supply chain management of Mikurak US 6,606,744 B1 to the teaching of Minton US 6,014,643 would have yielded predictable results because the level of ordinary skill in the art demonstrated by the references applied shows the ability to incorporate such supply chain management techniques in securities trading. Further, applying set time limitations to Minton US 6,014,643 with a timeout calculation, would have been recognized by one of ordinary

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skill in the art as resulting in an improved system that would allow more efficient control over an interactive securities trading system. It has been clearly disclosed in the KSR rational that when a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, § 103 likely bars its patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill. Id. at \_\_\_\_, 82 USPQ2d at 1396

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

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Patent Examiner, A.U. 3684  
January 6, 2010

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